U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33818924

Date: SEPT. 25, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is an actor who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that even though the record established that the Petitioner met at least three of the ten regulatory criteria, his case did not warrant a favorable finding in the final merits determination. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field

through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then move to the second step to consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-step review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner has been an actor for more than two decades and has appeared in multiple feature films and television series.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Director, the Petitioner initially checked the incorrect immigrant classification box on the petition and he did not clearly indicate what criteria he was claiming. After the Director issued two requests for evidence (RFE), Petitioner's counsel submitted a new and corrected copy of a petition and submitted a very brief statement explaining what criteria the Petitioner then directly claimed, and a short statement relating to the final merits. Within that brief statement, the Petitioner claimed he met seven of the regulatory criteria.

The Director decided that the Petitioner satisfied three of the criteria relating to published material, a leading or critical role, and high salary or remuneration but did not indicate whether he met any of the other claimed criteria. On appeal, the Petitioner maintains that he also satisfied the membership, contributions of major significance, display, and commercial success criteria and notes the Director failed to even indicate whether he fulfilled those regulatory provisions. After reviewing all the arguments and evidence in the record, we conclude that within this petition, the Petitioner has not adequately demonstrated he is eligible for this immigrant classification.

Because the Petitioner has established that he meets three evidentiary criteria, it is unnecessary that we discuss the remaining criteria and associated evidence, but we will incorporate our analysis of those issues within the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements

have been recognized in the field through extensive documentation. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119–20). *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification). In this matter, we determine that the Petitioner has not shown his eligibility.

According to the Petitioner's initial filing statement, he started his acting career in 2000 and over the subsequent decades, he has steadily ascended in stature in that profession. He has appeared in several television programs and movies, which led to his approval for an O-1 nonimmigrant visa to complete his projects, and his membership in the Academy of Television Arts & Sciences. While we agree the Petitioner is accomplished in his field, the record as presented in this petition does not demonstrate that his achievements rise to a level of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

We first address a shortcoming in the appellate filing in which the Petitioner relies on achievements that did not exist, or did not come to fruition, on or before the date he filed this petition. Because he must establish he is eligible for the requested benefit at the time of filing the application or petition, those achievements that postdate the petition filing date will not factor into this decision. 8 C.F.R. § 103.2(b)(1). There are multiple forms of evidence that postdate the petition filing date, but the most notable is the [redacted] nomination in 2024.

Although the Director discussed the Petitioner's membership in the Academy of Television Arts & Sciences, they did not consider [redacted] letter. Within her letter, Ms. [redacted] indicated the Academy of Television Arts & Sciences offers membership to those who achieve notable success in the television industry, and their membership is comprised exclusively of television industry professionals who have accrued enough credits or experience to meet the criteria for joining the Academy, as well as one of their specialty peer groups. She further noted the Petitioner's credited work was the basis for his approval of National Active status in the Performers Peer Group. According to Ms. [redacted] that status "denotes those eligible to vote in our Emmy competitions and is conferred only upon those who have achieved a significant position within the industry or accumulated enough credits to exemplify proficiency at their craft." She listed the criteria for National Active status as:

- The candidate is at least eighteen years of age;
- They have been actively engaged in activities related to the production or distribution of television for national exhibition during the four immediately preceding years; and
- They qualify for admission to one or more Peer Groups, or are nominated for a Primetime Emmy Award within the four years preceding their application for membership, or have achieved a significant body of work relevant to the peer group.

As it relates to the third bullet, the Petitioner does not claim that he was nominated for a Primetime Emmy Award within the four years preceding his membership application in approximately 2017. She also provided the requirements for those in the National Performers Peer Group as the following:

- Employment as a performer for a minimum of two years with ten qualifying credits of nationally exhibited content in a principal role within the past four years. Background work is excluded;
- At least fifty percent of the ten qualifying credits must be from traditional network broadcast, cable and/or streaming service original content; and
- Active (voting) members must maintain the current requirements of the peer group. All members will go through periodic reviews of their credits by the Performer Peer Group Governors to determine if they still qualify. If a member no longer meets the criteria for Active membership, they are moved to an Associate (non-voting) membership.

Although Ms. [redacted] did not mention it, the Academy of Television Arts & Sciences' website reflects the organization charges annual dues for National Active memberships, and members submit an application for inclusion rather than exclusively being invited to join based on career achievements.[1, 2] Being part of this entity, and to a lesser extent the above listed criteria, demonstrate this membership is notable as it denotes the Petitioner is part of a professional organization that plays a significant role in the television industry in the United States. But neither he nor Ms. [redacted] explains why it is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Additionally, the statute and regulations require the Petitioner to demonstrate that his national or international acclaim has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted under this regulatory area is a single instance of above-average membership and it predates the petition filing date by approximately six years. The Petitioner has not demonstrated how this single instance is consistent with sustained national or international acclaim, nor has he shown that one membership is representative of extensive documentation.

Regarding the published material regulatory area, the Director decided the Petitioner's evidence did not demonstrate that his overall publication record is tantamount to a career of acclaimed work or that it demonstrates the required sustained national or international acclaim. On appeal, the Petitioner's brief states that he "appeared in well know [sic-] publications and said publicity has been, absent the [2023 actor's] strike, continuous for the past 15 years. This is sustained national and international acclaim." This is not a substantive rebuttal to the Director's analysis in the denial decision as it doesn't delve into why the published material amounts to at least sustained national acclaim, and we will not address this regulatory area further.

And the Petitioner discusses an interview that occurred prior to the date he filed the petition, but it was not released to the public until after the filing date. He claims the interview "could not be released to the public until after the actors strike ended on November 13, 2023," but the interview was published in January 2024 well after the Petitioner states the strike ended and he does not account for the delay. If the

[1] *Membership at the Television Academy*, Television Academy Emmys (Aug. 15, 2024), https://www.emmys.com/members/join.
[2] *No Invitation Necessary*, Television Academy Emmys (Aug. 15, 2024), https://www.emmys.com/members/video/2024-02.

Petitioner wished to include that published material in this petition, it would have been necessary for him to wait an additional month to file this petition.

We will not factor that achievement into this analysis any more than we would count a lifetime achievement award issued after the petition filing date for work a foreign national completed before they filed the petition. The Petitioner must establish he is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). The Petitioner has not demonstrated that he is one of a small percentage who have risen to the very top in his field, or that he has sustained national or international acclaim in this regulatory topical area. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119–20.

Turning to the original contributions of major significance topic, the Petitioner's initial filing before the Director did not directly assert eligibility relating to his contributions and in response to the RFE he only presented his career statistics consisting of the following:

> [The Petitioner] has been an active actor for 23 years. He has more than 60 credits at the time of the submission of this at-issue Petition including appearing in 39 television series, 13 feature films, 8 television movies and to which the Beneficiary has brought his originality to his diverse roles.

The Director discussed several letters the Petitioner offered from those in his industry and decided that even though they reflected his achievements, they did not sufficiently support his claims that he is considered among that small percentage at the top of his field. On appeal, the Petitioner simply offers the same statement about his career statistics without refuting any element in the denial decision. Lacking is the Petitioner's perspective explaining how his lengthy stint in the field is a contribution to the field that is of major significance. Simply demonstrating a long span accumulating work credits is not a showing his body of work is commensurate with those who are part of the small fraction of individuals at the very top of field of endeavor or that he has amassed a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Under the subject area of the Petitioner's work on display at artistic exhibitions or showcases—before the Director and on appeal—he only highlights one film he appeared in that premiered at the [redacted] Film Festival. The Petitioner offered an article, a single document that appears to represent a screenshot of a YouTube interview with one of the film's stars, and a *Wikipedia* printout about the festival.

We begin with the information from *Wikipedia*, as there are no assurances about the reliability of the content from this open, user-edited internet site. *See* General Disclaimer, *Wikipedia* (Apr. 6, 2024), http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *see also Badasa v. Mukasey*, 540 F.3d 909, 910 (8th Cir. 2008). While this documentation is not without value, it carries significantly diminished evidentiary weight within the present proceedings and the information on this website must be corroborated by additional probative evidence.

Regarding the film the Petitioner appeared in which premiered at the [redacted] Film Festival, we acknowledge he was billed as one of the film's lead actors. Still, despite that fact, he has not illustrated that the film's premier at that festival is sufficiently representative of sustained acclaim.

Nor is a single instance and the limited supporting evidence present here indicative of the very high standard to present more extensive documentation. *See* H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30703, 30704 (July 5, 1991). And finally, he does not demonstrate this festival that appears more intended to represent independent films is on par with some of the most prestigious festivals such as Cannes, Sundance, Venice, or Toronto.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), while the Director decided he performed in a leading or critical role for one qualifying organization in his field, they also determined he did not show that his employment as an actor was reflective of, or has resulted in, widespread acclaim from his field or that his performance in any role placed him among those at the very top of the field. The Director also found that he did not hold any other leading or critical roles for organizations or establishments with distinguished reputations. As a result, the Director noted the Petitioner's qualifying performance or acclaim for one entity was not sustained as this classification mandates.

In the appeal, the Petitioner refers back to the claims and evidence he presented in the RFE response to show that he has performed in a leading or critical role for several entities. But a review of his RFE response only reveals that he listed several organizations and asserted he performed both leading and critical acting roles for those establishments without offering further arguments of how his performance as a single actor was leading or critical for the entity itself. This leaves us agreeing with the Director's determination relating to this regulatory subject area. The record the Petitioner developed is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Again, the Director decided that the Petitioner met the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), but in the final merits analysis concluded he did not show that his earnings were at a level reflecting national or international acclaim or that they placed him among the small percentage at the top of his field. In the appeal, he highlights the material that delineates between struggling actors who never break through and who do not earn enough to solely rely on their acting wages to make a living, as compared to those who can focus solely on acting for their earnings.

To synthesize the Petitioner's claims, his earnings were well above the average for other actors in general. But that is not the type of comparison to directly establish how high his earnings were for other actors at the top of the field. The Petitioner has not provided information that would enable us to provide a proper determination of whether his salary is reflective "of that small percentage who have risen to the very top of the field of endeavor." Additionally, on appeal he identifies materials that postdate the petition filing date, and we already detailed why that type of evidence will not factor into this decision.

The Petitioner claims films in which he acted brought in gross revenues of more than $34 million in the United States and Canada alone, and more if we were to consider other major countries. But the Director didn't even grant the criterion within step one of the adjudication process at 8 C.F.R. § 204.5(h)(3)(x).

Notably absent from the record is evidence of box office receipts for other commercially successful movies in the United States or Canada to which we could compare the box office evidence relating to the Petitioner's films. The situation we face again is the record lacks evidence in which to compare

in a topical area where it is necessary to contrast the Petitioner's accolades with others who are at or near the top of the field. And as it relates to the Netflix series the Petitioner advances, he offered a contract for that production reflecting he appeared in one episode and he completed his commitment to that project in one working day.

So, despite the popularity that series experienced and his efforts to correlate that to the area of commercial success, he does not explain how his presence in one episode in a ten-episode series was so consequential that the series' success can measurably be attributed to his appearance. Ultimately, the record does not demonstrate the Petitioner's works have garnered sufficiently critical acclaim or favorable press reviews or otherwise drew a significant level of sales in a manner consistent with sustained national or international acclaim. Furthermore, the Petitioner did not demonstrate that he maintained high box office receipts reflecting his recognition in the field.

In summary, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. Although he has made notable strides in his career and may be poised for further growth, at this point he remains in a liminal stage in his endeavors.

USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). The Petitioner's evidence confirms that he is an accomplished actor with some work as a lead performer. However, considering the full measure of the Petitioner's ability and achievements, the level of his national or international acclaim and the extent to which his achievements have been recognized in the field are not indicative of a record of sustained acclaim. Also, he has not submitted extensive documentation exhibiting he has attained a level of expertise placing him among that small percentage that has risen to the very top of the field of endeavor.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

ORDER: The appeal is dismissed.